CRIMINAL BACKGROUND CHECKS: PROVISIONS AND CITATIONS IN ADULT PROTECTIVE SERVICES LAWS, BY STATE

(Laws current as of 12/31/06)

Prepared by Lori Stiegel and Ellen Klem of the American Bar Association Commission on Law and Aging[1] for the National Center on Elder Abuse[2]

Copyright © American Bar Association Commission on Law and Aging (2007)

Research conducted on Westlaw compliments of West Group

CAUTION: Read the explanation of this chart before relying upon the chart. You can find the explanation online at http://www.abanet.org/aging/about/elderabuse.shtml.

STATE	STATUTORY PROVISION(S) AND CITATION(S)
California	(a) The Department of Justice shall secure any criminal record of a person to determine whether the person has ever been convicted of a violation or attempted violation of Section 243.4 of the Penal Code, a sex offense against a minor, or of any felony which requires registration pursuant to Section 290 of the Penal Code, or whether the person has been convicted or incarcerated within the last 10 years as the result of committing a violation or attempted violation of Section 273a, 273d, or subdivision (a) or (b) of Section 368, of the Penal Code, or as the result of committing a theft, robbery, burglary, or any felony, and shall provide a subsequent arrest notification pursuant to Section 11105.2 of the Penal Code, if both of the following conditions are met: (1) An employer of the person requests the determination and submits fingerprints of the person to the Department of Justice. For purposes of this paragraph, "employer" includes, but is not limited to, an in-home supportive services recipient, as defined by Section 12302.2 and any recipient of personal care services under the Medi-Cal program pursuant to Section 14132.95. (2) The person is unlicensed and provides nonmedical domestic or personal care to an aged or disabled adult in the adult's own home. (b) (1) If it is found that the person has ever been convicted of a violation or attempted violation of Section 243.4 of the Penal Code, a sex offense against a minor, or of any felony which requires registration pursuant to Section 290 of the Penal Code, or that the person has been convicted or incarcerated within the last 10 years as the result of committing a violation or attempted violation of Section 273a, 273d, or subdivision (a) or (b) of Section 368, of the Penal Code, or as the result of committing a theft, robbery, burglary, or any felony, the Department of Justice shall notify the employer of that fact. If no criminal record information has been recorded, the Department of Justice shall provide the employer with a statement of that fact. (2) Any employer may deny employment to any person who is the subject of a report under paragraph (1) when the report indicates that the person has committed any of the crimes identified in paragraph (1). (3) Nothing in this section shall be construed to require any employer to hire any person who is the subject of a report under paragraph (1) when the report indicates that the person has not committed any of the crimes indicated in paragraph (1). (c) (1) Fingerprints shall be on a card provided by the Department of Justice for the purpose of obtaining a set of fingerprints. The employer shall submit the fingerprints to the Department of Justice. Within 30 calendar days of the receipt of the fingerprints, the Department of Justice shall notify the employer of the criminal record information, as provided in this subdivision. If no criminal record information has been recorded, the Department of Justice shall provide the employer with a statement of that fact as soon as possible, but not later than 30 calendar days of receipt of the fingerprints. If new fingerprints are required for processing, the Department of Justice shall, as soon as possible, but not later than 30 calendar days from the date of receipt of the fingerprints, notify the employer that the fingerprints were illegible. (2) Fingerprints may be taken by

STATE	STATUTORY PROVISION(S) AND CITATION(S)
	any local law enforcement officer or agency for purposes of paragraph (1). (3) Counties shall notify any recipient of, or applicant for, in-home supportive services or personal care services under the Medi-Cal program, upon his or her application for in-home supportive services or personal care services or during his or her annual redetermination, or upon the recipient's changing providers, that a criminal record check is available, and that the check can be performed by the Department of Justice. (d) The Department of Justice shall charge a fee to the employer to cover the costs of administering this section. (e) It is the intent of the Legislature that the Department of Justice charge a fee to cover its cost in providing services in accordance with this section to comply with the 30-calendar-day requirement for provision to the department of the criminal record information, as contained in subdivision (c). Cal. Welf. & Inst. Code § 15660 (a) All initial certified nurse assistant and certified home health aide applicants, shall as a requirement for certification, undergo a criminal background check pursuant to Section 1338.5 of the Health and Safety Code. (b) Nurse assistants certified prior to July 1, 1998, shall, as a condition of renewal of their certificates, undergo a criminal background check pursuant to subdivision (a) of Section 1337.6 and Section 1338.5 of the Health and Safety Code. Commencing July 1, 1998, pursuant to Section 1338.5 of the Health and Safety Code, nurse assistant applicants whose applications were submitted on or after July 1, 1998, shall undergo a criminal background check. Cal. Welf. & Inst. Code § 15671. Home health aides certified prior to July 1, 1998, shall, as a condition of renewal of their certificates, undergo a criminal background check pursuant to Section 1736.6 of the Health and Safety Code. Commencing July 1, 1998, pursuant to Section 1736.6 of the Health and Safety Code, home health aide applicants whose applications are submitted on or after July 1, 1998, shall undergo a criminal background check. Cal. Welf. & Inst. Code § 15673
Idaho	…Upon request, all available supportive information shall be provided [by the Commission on Aging, which administers the APS program] to enable the department [of health and welfare] to conduct criminal background checks and other required investigations. Idaho Code § 39-5308(2)
Mississippi	Each person, business, organization or other entity, whether public or private, operated for profit, operated for nonprofit or a voluntary unit of government not responsible for law enforcement providing care, supervision or treatment of vulnerable adults shall conduct criminal history records checks on each new employee of the entity who provides, and/or would provide direct patient care or services to adults or vulnerable persons, as provided in Section 43-11- 13. Miss. Code Ann. § 43-47-7(6)
Missouri (#2) Mo. Ann. Stat. §§ 660.300 – 660.321 *(these provisions are applicable only to individuals who are*	1. For the purposes of this section, the term "provider" means any person, corporation or association who: (1) Is licensed as an operator pursuant to chapter 198, RSMo; (2) Provides in-home services under contract with the department; (3) Employs nurses or nursing assistants for temporary or intermittent placement in health care facilities; (4) Is an entity licensed pursuant to chapter 197, RSMo; (5) Is a public or private facility, day program, residential facility or specialized service operated, funded or licensed by the department of mental health; or

STATE	STATUTORY PROVISION(S) AND CITATION(S)
receiving "in home services" as defined by § 660.250(9) "through any in-home services provider agency" as defined by § 660.250(11). Missouri does not have two statutes. We established this construct to distinguish in the charts between the provisions applicable to individuals who are receiving in home services and those who are not. The statute indicated that the definitions contained in 660.250 apply to what we have labeled as Missouri #2; 660.300 – 660.321.)	(6) Is a licensed adult day care provider. 2. For the purpose of this section "patient or resident" has the same meaning as such term is defined in section 43.540, RSMo. 3. Prior to allowing any person who has been hired as a full-time, part-time or temporary position to have contact with any patient or resident the provider shall, or in the case of temporary employees hired through or contracted for an employment agency, the employment agency shall prior to sending a temporary employee to a provider: (1) Request a criminal background check as provided in section 43.540, RSMo. Completion of an inquiry to the highway patrol for criminal records that are available for disclosure to a provider for the purpose of conducting an employee criminal records background check shall be deemed to fulfill the provider's duty to conduct employee criminal background checks pursuant to this section; except that, completing the inquiries pursuant to this subsection shall not be construed to exempt a provider from further inquiry pursuant to common law requirements governing due diligence. If an applicant has not resided in this state for five consecutive years prior to the date of his or her application for employment, the provider shall request a nationwide check for the purpose of determining if the applicant has a prior criminal history in other states. The fingerprint cards and any required fees shall be sent to the highway patrol's criminal records division. The first set of fingerprints shall be used for searching the state repository of criminal history information. If no identification is made, the second set of fingerprints shall be forwarded to the Federal Bureau of Investigation, Identification Division, for the searching of the federal criminal history files. The patrol shall notify the submitting state agency of any criminal history information or lack of criminal history information discovered on the individual. The provisions relating to applicants for employment who have not resided in this state for five consecutive years shall apply only to persons who have no employment history with a licensed Missouri facility during that five-year period. Notwithstanding the provisions of section 610.120, RSMo, all records related to any criminal history information discovered shall be accessible and available to the provider making the record request; and (2) Make an inquiry to the department of health and senior services whether the person is listed on the employee disqualification list as provided in section 660.315. 4. When the provider requests a criminal background check pursuant to section 43.540, RSMo, the requesting entity may require that the applicant reimburse the provider for the cost of such record check. When a provider requests a nationwide criminal background check pursuant to subdivision (1) of subsection 3 of this section, the total cost to the provider of any background check required pursuant to this section shall not exceed five dollars which shall be paid to the state. State funding and the obligation of a provider to obtain a nationwide criminal background check shall be subject to the availability of appropriations. 5. An applicant for a position to have contact with patients or residents of a provider shall: (1) Sign a consent form as required by section 43.540, RSMo, so the provider may request a criminal records review; (2) Disclose the applicant's criminal history. For the purposes of this subdivision "criminal history" includes any conviction or a plea of guilty to a misdemeanor or felony charge and shall include any suspended imposition of sentence, any suspended execution of sentence or any period of probation or parole; and (3) Disclose if the applicant is listed on the employee disqualification list as provided in section 660.315. 6. An applicant who knowingly fails to disclose his or her criminal history as required in subsection 5 of this section is guilty of a class A misdemeanor. A provider is guilty of a class A misdemeanor if the provider knowingly hires or retains a person to have contact with patients or residents and the person has been convicted of, pled guilty to or nolo contendere in this state

STATE	STATUTORY PROVISION(S) AND CITATION(S)
	or any other state or has been found guilty of a crime, which if committed in Missouri would be a class A or B felony violation of chapter 565, 566 or 569, RSMo, or any violation of subsection 3 of section 198.070, RSMo, or section 568.020, RSMo. 7. Any in-home services provider agency or home health agency shall be guilty of a class A misdemeanor if such agency knowingly employs a person to provide in-home services or home health services to any in-home services client or home health patient and such person either refuses to register with the family care safety registry or is listed on any of the background check lists in the family care safety registry pursuant to sections 210.900 to 210.937, RSMo. 8. The highway patrol shall examine whether protocols can be developed to allow a provider to request a statewide fingerprint criminal records review check through local law enforcement agencies. 9. A provider may use a private investigatory agency rather than the highway patrol to do a criminal history records review check, and alternatively, the applicant pays the private investigatory agency such fees as the provider and such agency shall agree. 10. Except for the hiring restriction based on the department of health and senior services employee disqualification list established pursuant to section 660.315, the department of health and senior services shall promulgate rules and regulations to waive the hiring restrictions pursuant to this section for good cause. For purposes of this section, "good cause" means the department has made a determination by examining the employee's prior work history and other relevant factors that such employee does not present a risk to the health or safety of residents. Mo. Ann. Stat. § 660.317
Pennsylvania	[**NOTE:** The following provisions, which compose “Chapter 5: Criminal History for Employees” of the APS law, apply only to an “employee” of a “facility” as defined in the APS law. To review those definitions, see the CITATIONS TO ADULT PROTECTIVE SERVICES (APS), INSTITUTIONAL ABUSE, AND LONG TERM CARE OMBUDSMAN PROGRAM (LTCOP) LAWS chart on this website for a link to Pennsylvania’s APS law.] The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise: “Applicant.” An individual who submits an application, which is being considered for employment, to a facility. “State Police.” The Pennsylvania State Police. 35 Pa. Cons. Stat. Ann. § 10225.501 (a) General rule.--A facility shall require all applicants to submit with their applications, and shall require all administrators and any operators who have or may have direct contact with a recipient to submit, the following information obtained within the preceding one-year period: (1) Pursuant to 18 Pa.C.S. Ch. 91 (relating to criminal history record information), a report of criminal history record information from the State Police or a statement from the State Police that their central repository contains no such information relating to that person. The criminal history record information shall be limited to that which is disseminated pursuant to 18 Pa.C.S. § 9121(b)(2) (relating to general regulations). (2) Where the applicant is not and for the two years immediately preceding the date of application has not been a resident of this Commonwealth, administration shall require the applicant to submit with the application for employment a report of Federal criminal history record information pursuant to the Federal Bureau of Investigation's appropriation under the Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1973 (Public Law 92-544, 86 Stat. 1109). The department shall be the

STATE	STATUTORY PROVISION(S) AND CITATION(S)
	intermediary for the purposes of this paragraph. For the purposes of this paragraph, the applicant shall submit a full set of fingerprints to the State Police, which shall forward them to the Federal Bureau of Investigation for a national criminal history record check. The information obtained from the criminal record check shall be used by the department to determine the applicant's eligibility. The determination shall be submitted to the administrator by the applicant prior to commencing employment. The administrator shall insure confidentiality of the information. (b) Fees.--The State Police may charge the applicant a fee of not more than $10 to conduct the criminal record check required under subsection (a)(1). The State Police may charge a fee of not more than the established charge by the Federal Bureau of Investigation for the criminal history record check required under subsection (a)(2). The State Police shall develop a billing system to allow facilities and administrators to assume responsibility for the fee under this subsection. The State Police shall allow facilities or administrators to establish an account for quarterly payment. 35 Pa. Cons. Stat. Ann. § 10225.502
	(a) General rule.--In no case shall a facility hire an applicant or retain an employee required to submit information pursuant to section 502(a) if the applicant's or employee's criminal history record information indicates the applicant or employee has been convicted of any of the following offenses: (1) An offense designated as a felony under the act of April 14, 1972 (P.L. 233, No. 64), known as The Controlled Substance, Drug, Device and Cosmetic Act. (2) An offense under one or more of the following provisions of 18 Pa.C.S. (relating to crimes and offenses): Chapter 25 (relating to criminal homicide). Section 2702 (relating to aggravated assault). Section 2901 (relating to kidnapping). Section 2902 (relating to unlawful restraint). Section 3121 (relating to rape). Section 3122.1 (relating to statutory sexual assault). Section 3123 (relating to involuntary deviate sexual intercourse). Section 3124.1 (relating to sexual assault). Section 3125 (relating to aggravated indecent assault). Section 3126 (relating to indecent assault). Section 3127 (relating to indecent exposure). Section 3301 (relating to arson and related offenses). Section 3502 (relating to burglary). Section 3701 (relating to robbery). A felony offense under Chapter 39 (relating to theft and related offenses) or two or more misdemeanors under Chapter 39. Section 4101 (relating to forgery). Section 4114 (relating to securing execution of documents by deception). Section 4302 (relating to incest). Section 4303 (relating to concealing death of child). Section 4304 (relating to endangering welfare of children).

STATE	STATUTORY PROVISION(S) AND CITATION(S)
	Section 4305 (relating to dealing in infant children). Section 4952 (relating to intimidation of witnesses or victims). Section 4953 (relating to retaliation against witness or victim). A felony offense under section 5902(b) (relating to prostitution and related offenses). Section 5903(c) or (d) (relating to obscene and other sexual materials and performances). Section 6301 (relating to corruption of minors). Section 6312 (relating to sexual abuse of children). (3) A Federal or out-of-State offense similar in nature to those crimes listed in paragraphs (1) and (2). (b) Deleted. (c) Immunity.--An administrator or a facility shall not be held civilly liable for any action directly related to good faith compliance with this section. 35 Pa. Cons. Stat. Ann. § 10225.503
	The department, in consultation with the Department of Health and the Department of Public Welfare, shall promulgate the regulations necessary to carry out this chapter. 35 Pa. Cons. Stat. Ann. § 10225.504
	(a) Administrative.— (1) An administrator who intentionally or willfully fails to comply or obstructs compliance with the provisions of this chapter commits a violation of this chapter and shall be subject to an administrative penalty under paragraph (3). (2) A facility owner that intentionally or willfully fails to comply with or obstructs compliance with this chapter commits a violation of this chapter and shall be subject to an administrative penalty under paragraph (3). (3) The Commonwealth agency or Commonwealth agencies which license the facility have jurisdiction to determine violations of this chapter and may issue an order assessing a civil penalty of not more than $2,500. An order under this paragraph is subject to 2 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure of Commonwealth agencies) and Ch. 7 Subch. A (relating to judicial review of Commonwealth agency action). (b) Criminal.— (1) An administrator who intentionally or willfully fails to comply or obstructs compliance with this chapter commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of $2,500 or to imprisonment for not more than one year, or both. (2) A facility owner that intentionally or willfully fails to comply with or obstructs compliance with this chapter commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of $2,500 or to imprisonment for not more than one year, or both. 35 Pa. Cons. Stat. Ann. § 10225.505
	Notwithstanding section 502, administrators may employ applicants on a provisional basis for a single period not to exceed 30 days or, for applicants under section 502(a)(2), a period of 90 days, if all of the following conditions are met: (1) The applicant has applied for the information required under section 502 and the applicant provides a copy of the appropriate completed request forms to the administrator. (2) The administrator has no knowledge of information pertaining to the applicant which would disqualify him from

STATE	STATUTORY PROVISION(S) AND CITATION(S)
	employment pursuant to section 503, subject to 18 Pa.C.S. § 4911 (relating to tampering with public records or information). (3) The applicant swears or affirms in writing that he is not disqualified from employment under section 503. (4) If the information obtained under section 502 reveals that the applicant is disqualified from employment under section 503, the applicant shall be immediately dismissed by the administrator. (5) The department shall develop guidelines regarding the supervision of applicants. For a home health care agency, supervision shall include random direct supervision by an employee who has been employed by the facility for a period of one year. 35 Pa. Cons. Stat. Ann. § 10225.506. No later than one year following the effective date of this chapter, the State Police and the department shall report to the Aging and Youth Committee of the Senate and the Aging and Youth Committee of the House of Representatives with their findings and recommendations regarding the implementation of this chapter. 35 Pa. Cons. Stat. Ann. § 10225.507 This chapter shall apply as follows: (1) An individual who, on the effective date of this chapter, has continuously for a period of one year been an employee of the same facility shall be exempt from section 502 as a condition of continued employment. (2) If an employee is not exempt under paragraph (1), the employee and the facility shall comply with section 502 within one year of the effective date of this chapter. (3) If an employee who is exempt under paragraph (1) seeks employment with a different facility, the employee and the facility shall comply with section 502. (4) An employee who has obtained the information required under section 502 may transfer to another facility established and supervised by the same owner and is not required to obtain additional reports before making the transfer. 35 Pa. Cons. Stat. Ann. § 10225.508
Vermont	(a) The commissioner may obtain from the Vermont crime information center the record of convictions of any person to the extent that the commissioner has determined by rule that such information is necessary to protect vulnerable adults. (b) An employer may ask the commissioner to obtain from the Vermont crime information center the record of convictions of a person who is a current employee, volunteer or contractor, or a person to whom the employer has given a conditional offer of a contract, volunteer position, or employment. The request shall be in writing and shall be accompanied by a release by the current or prospective contractor or employee. If the person has a record of convictions, the commissioner shall inform the employer of the date and type of conviction. (c) A person or organization serving vulnerable adults by assisting with employer functions, offering, providing, or arranging for home sharing, personal care services, developmental services, or mental health services for vulnerable adults, may submit a request to the commissioner concerning an individual who has applied to provide such services or an individual who is already so engaged. The request shall be in writing, and shall be accompanied by a release from the individual applying for or already providing such services. If the individual has a record of convictions, the commissioner shall inform the person or organization submitting the request of the date and type of conviction. (d) The commissioner of developmental and mental health services, or the commissioner's designee, for purposes related to oversight and monitoring of persons who are served by or compensated with funds provided by the department of

STATE	STATUTORY PROVISION(S) AND CITATION(S)
	developmental and mental health services, may ask the Vermont crime information center for the record of convictions of a person who is a current employee, volunteer or contractor, or a person to whom the employer has given a conditional offer of a contract, volunteer position, or employment. If the individual has a record of convictions, the Vermont crime information center shall inform the commissioner, or the commissioner's designee, of the date and type of conviction. (e) Information released to an employer under this section shall not be released or disclosed by the employer to any person. Any person who violates this subsection shall be fined not more than $500.00. (f) Volunteers shall be considered employees for purposes of this section. (g) As used in this section, “commissioner” means the commissioner of the department of aging an[d] disabilities or the commissioner of developmental and mental health services, or their designees. Vt. Stat. Ann. tit. 33, § 6914

[1] The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the American Bar Association.

[2] This document was completed for the National Center on Elder Abuse and supported in part by a grant, No. 90AM2792, from the Administration on Aging, U.S. Department of Health and Human Services. Grantees undertaking projects under government sponsorship are encouraged to express freely their findings and conclusions. Therefore, points of view or opinions do not necessarily represent official Administration on Aging policy.